IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No 51 of 1986

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

STATE OF GUJARAT

Versus

KOLI KHIMA VIRA

Appearance:

MR BHUKARI, Addtional P.P., for the Petitioner

MR BP TANNA for Respondent No. 1

CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 15/06/2001

ORAL JUDGEMENT

The State of Gujarat, aggrieved by the judgement and order dated October 9th, 1985 rendered by J.M.F.C., Bhanvad, Dist. Jamnagar in Criminal Case No.35 of 1985, acquitting the present respondent for an offence punishable under Section 25(1) of the Arms Act, has preferred this appeal against the acquittal.

2. The facts leading to this appeal are that, Bhanvad P.S.I. conducted a search of the house of the respondent on December 5th, 1984. After passing an order under Section 165 of Cr.P.C., the said search was conducted in presence of two panch witnesses, namely, Harbham Natha Mer and Rana Samat Mer of village Jambusar. The said search was conducted at about 1:15 p.m. and during the search a country-made pistol/tamancha of 12 m.m. caliber alongwith two live cartridges were found lying under the pillow on a cot. The said weapon was seized by the police on inquiry from the respondent. It was found that he did not possess any licence/permit for possession of the said weapon. A charge-sheet was therefore filed against him and a Criminal Case No.35 of 1985 was registered. The accused - respondent was charged for an offence punishable under Section 25(1)(a) of the Arms Act, 1959. The evidence was recorded and considering the evidence on record the trial Court came to the conclusion that the prosecution had failed to establish the charges against the accused and therefore, the accused-respondent came to be acquitted by the trial Court by passing the impugned judgement and order.

3. Aggrieved by the said judgement and order the State of Gujarat has preferred this appeal.

4. Heard learned Addl.P.P. Mr.Bukhari for the appellant-State. None has appeared for the respondent. Learned Advocate, Mr.Harshad Tolia who is present in the Court has volunteered to render his services as amicus curie.

5. Learned Addl.P.P. has taken this Court through the record and proceedings. His contention is that the reasonings adopted by the trial Court for acquitting the accused-respondent are inadequate for recording an acquittal. There is an error in evaluation of evidence. Whether the order under Section 165 of Cr.P.C. was passed in absence of panch witness or otherwise is not material when the panch witness supports the factum of search and finding of weapon. It is also established that the accused-respondent did not have any licence/permit for possessing country-made pistol and/or the live cartridges. Learned Magistrate, therefore, ought not to have acquitted the accused. Mr.Bukhari urged that the appeal may therefore be allowed and the judgement and order impugned herein may be set aside and the respondent be convicted for the charges levelled against him.

6. Learned advocate Mr.Tolia has taken this Court through the evidence and the provisions of the Arms Act. His contention is that even if the evidence is accepted as face value, no offence under Arms Act can be said to have been constituted for which the respondent was charged. He has submitted that the prosecution case suffers from infirmities which are discussed by the learned magistrate and, therefore, this Court may not entertain this appeal and may confirm the judgement and order impugned herein.

7. Having regard to the rival side contentions, it is to be noted that the prosecution evidence is that a search was conducted in presence of panch witnesses in the house of the accused and during the search the muddamal weapon and cartridges were found lying under a pillow on a cot. It is the case of the prosecution that the accused did not have any licence/permit for possessing the weapon and/or the cartridges.

8. Now, admittedly, the accused was charged for an offence punishable under Section 25(1)(a) of the Arms Act, 1959. Section 25(1)(a) prescribes punishment for manufacturing, selling, transferring, converting, repairing, testing, proving or exposing or offering sale or transfer or possessing for sale, transfer, conversion, repair, test or proof, any arm or ammunition in contravention of Section 5 of the Arms Act.

Section 5 provides for licence for manufacture, Sale etc. of arms Act and ammunition.

9. Now, if the evidence is scanned and even if it is accepted as face value, there is nothing to indicate that the accused was found in possession of the said weapon and ammunition for sale, transfer, conversion, repair, test or proof. There is absolutely no evidence to indicate any of this requirements and therefore no offence can be said to have proved under this provision by the prosecution. It is also required to be noted that Section 25(1)(a) provides for punishment for acquiring or having in possession or carrying any prohibited arms or prohibited ammunition in contravention of Section 7 of the Arms Act. Now, if Section 7 of the Arms Act is seen it provides that no person shall acquire, have in his possession or carry or use, manufacture, sale, transfer, convert, repair, test or prove or expose or offer for sale, or transfer, or have in his possession for sale, transfer, conversion, repair, test or proof any prohibited arms or prohibited ammunition unless he has been specially authorized by the Central Government in

this behalf.

10. Mr.Bukhari, learned Addl.P.P. after perusal of the evidence was not able to indicate anything on record that the case against the respondent was for a prohibited arm.

11. Therefore, apart from the infirmity found in the evidence of the prosecution, even if the prosecution evidence taken as face value, there is nothing to indicate any evidence to show that the offence with which the accused was charged is proved to have constituted.

12. On perusal of evidence of panch Harbham Natha (Exh.11), it is clear that he has admitted the fact that he is a witness in a case between the accused-respondent and Meraman Mangu.

13. In view of the above discussion, it cannot be said that the trial Court has committed an error in according an acquittal against the respondent. Learned Addl.P.P. was not able to point out any error or infirmity in the judgement impugned herein requiring any interference by this Court in the order of acquittal. The appeal therefore must fail and is therefore dismissed.

14. It would be appropriate to place on record the appreciation of the services rendered by learned advocate Mr.Tolia as amicus curiae.

(A.L.Dave, J)
'Bhavesh'